United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

74-2588

In The

United States Court of Appeals

FOR THE
SECOND CIRCUIT

B

No. 74-2588

BERRY PETROLEUM COMPANY, an Arkansas Corp. (Dissolved); J. E. O'DANIEL; YVONNE LAW; McALESTER FUEL COMPANY and GERLAND P. PATTEN & Co., INC.,
Plaintiffs-Appellants,

v.

P/S

ADAMS & PECK; ALLEN & COMPANY, INCORPORATED; AMERICAN STOCK EXCHANGE; ARTHUR YOUNG & COMPANY A. BRUCE ROZET; OLIVER A. UNGER; IRVING GOLDSTEIN; SIDNEY KIBRICK; RICHARD A. SARAZAN; RODNEY W. LOEB; ARNE KALM; H. IGOR ANSOFF; GOTTFRIED von MEYERN HOHENBERG; HOWARD D. MARTIN; PETER GETTINGER; KLEINER, BELL & Co., KLEINER, BELL & Co., INC.; BURT KLEINER; LIONEL BELL; RALPH SHAPIRO; THEODORE SAYERS; PETER HUANG; BENJAMIN F. BRESLAUER; SOL STAMESHKIN BRYCE CRIDER; ELY A. LANDAU; JAMES A. LEWIS ENGINEERING, a Division of UNIVERSITY COMPUTING CORPORATION; and VARIETY INC.,
Defendants-Appellees.

On Appeal from the United States District Court
For the Southern District of New York

APPELLANTS' REPLY BRIEF

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5

TABLE OF CONTENTS

Cases Page

Page

Other Authorities

Statutes and Rules

Index of Authorities — (Continued)

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COUNTERSTATEMENT

Appellees' statement of the case goes beyond the record to misconceive and misstate the facts of this action as they

relate to Berry and its shareholders, and hence this reply by counter-statement. (Appellees' Joint Brief, pp. 4-6).

Berry and its management, as its name implies, were long-time producers of oil and gas and, in appraising Commonwealth in early 1968, they looked primarily to the assets with which they had most acquaintance. Thus, greatest reliance was placed on Commonwealth's principal asset, Sunset Petroleum's oil and gas reserves and values.

(A) Appellants' principal allegations relate to misrepresentations[1] of the extent and value of oil and gas properties made prior to October 15, 1968, repeated until December, 1969, and not shown to be false until September, 1970.

The Reorganization Agreement of August 20, 1968 "warranted" that the S-1 registration statement of June 22, 1968 (the S-1) fairly presented the condition of Commonwealth (financial or otherwise) on August 20, 1968. (App. 18-19.)

The S-1 and the Commonwealth proxy statement of December 1969 made unqualified statements of Sunset's net developed and producing oil and gas reserves and present worth based on reports prepared by Appellee James A. Lewis Engineering Inc. of Dallas, Texas (Lewis).[2] On September 29, 1970, the same firm, Lewis, in a report prepared for Sunset's trustee in bankruptcy, re-stated the reserve reports and present worth of these same oil and gas properties. A tabulation reveals the fraud:

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[1] Complaint ¶¶ 22(b) (d) (g) (h) (i) (j) (k); App. 18-21.

[2] The Lewis reports were prepared by appellee Howard D. Martin when a vice president of Lewis shortly before he became vice president of Commonwealth in charge of Sunset, facts carefully concealed from appellants until the Sunset bankruptcy in May, 1970. (App. 21.)

Sunset
Developed and Producing Reserves

	S-1 (at 1-1-68)	Dec. '69 Proxy (at 6-30-69)	1970 Lewis Report (at 7-1-70)
Oil (bbls.)	21,720,000	19,439,000	7,779,889
Gas (MCF)	229,186,000	209,797,000	155,322,083
Oil & Gas Properties	$38,361,638[3]	$62,254,389[3]	$17,341,152[4]

The S-1 put stockholders' equity at $19,928,441. An independent evaluation of the oil and gas properties in 1968, as made by Lewis in 1970, would have reduced the S-1 assets by approximately $20,000,000, leaving a negative or zero stockholders' equity.

(B) Appellees refer to numerous news media and S.E.C. reports (all outside the record), and litigation against Commonwealth and its accomplices (appellees) as constituting knowledge in late 1969 requiring legal action by appellants. (Appellees' Joint Brief, p. 4, 25.)

The facts are that until the Sunset bankruptcy and the uninfected September 29, 1970 Lewis report, no news story, S.E.C. action or litigation alleged or intimated any misrepresentations regarding the extent and value of the oil and gas properties which were, by all previous financial statements, Commonwealth's principal asset.

A Securities and Exchange Commission press release of Decmeber 17, 1969 reported that:

(a) suspension of trading in Commonwealth securities

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[3] Balance sheet line item.

[4] Appraised net worth.

imposed August 1, 1969 would be lifted effective December 20, 1969;

(b) on December 8, 1969, the company mailed to its shareholders a proxy statement for a special meeting on December 29, 1969 (which never took place); and

(c) the December, 1969 proxy statement "is the first information available about the company's operations and financial condition since the dissemination of the Company's June 24, 1969 proxy statement."

This December 1969 proxy statement not only repeated the grotesque misrepresentations of oil and gas reserves and values, as detailed above, but put the corporate net worth at $73,288,572, when in fact Commonwealth was insolvent, in assets and liquidity.

(C) Appellees attempt to mesh *Berry I* and *Land* and the separate and independent settlements thereof contrary to: (1) the 1971 action of the Multi-District Panel; (2) the absence of appellees as parties to either action; and (3) the fact that nothing was contributed by any appellee to the *Berry I* settlement fund of stock or cash.

The refusal of the Multi-District Panel in 1971 to transfer *Berry I* for pre-trial consolidation with *Land* left *Berry I* a separate and independent action in another federal court of equal jurisdiction. *In re Seeburg-Commonwealth United Merger*, 333 F. Supp. 911 (Jud. Pan. Mult. Lit.). Thereafter, the *Land* Court, if it ever did, had no jurisdiction of the *Berry I* plaintiffs and class.

Appellees Adams & Peck, American Stock Exchange,

Stameshkin, Crider, Landau, Lewis and Variety, Inc. have never been parties to either *Berry I* or *Land* and therefore cannot plead *res judicata* by reason of any action in *Land*.

Appellee Allen & Co. was dismissed as a party in *Land* on April 7, 1972 and, therefore, was not a party when the subsequent final orders of dismissal in *Land* were made. (App. 244, 172, 193, 227.) Allen did, by private and apparently extra-judicial agreement, join in the *Land* settlement, but no appellants were parties to the agreement or executed the release required thereby or participated in such settlement proceeds. (App. 245.)

Finally, contrary to appellees' assertion that appellants recognized as a "fact" that they were members of the *Land* class, the *Berry I* settlement stipulation (between only appellants and two defendants not a party to this action) in fact recognized appellants "as a class' known as the *Berry* class. (App. 51-52 at ¶2.2.)

ARGUMENT

I.

Appellants are not barred by the Land action proceedings.

Again, the plea of *res judicata* cannot be made by any appellee who was not a party to *Land*, i.e., appellees Allen & Co., Adams & Peck, American Stock Exchange, Stameshkin, Crider, Landau, Lewis and Variety, Inc.[5]

Nor can Arthur Young & Co. plead *res judicata* because, as Young's February 23, 1973 answer in this action recognized, *Berry II* was filed well prior to the entry of any Final Judgment in *Land* as to Young.[6] (App. 29 at ¶ V.) In this action in the District Court, Young first took the position that the *Berry II* class was entitled to participate in the Young settlement proceeds. (App. 38 at ¶ 14.) Subsequently, however, at oral argument and here, attorneys for Young reversed this position to contend that the *Berry I* class is *not* entitled to share in the Young settlement proceeds. The fundamental fallacy in appellees' position is dramatized by this unexplained vacillation.

Neither were any appellants parties to *Land* and the settlements therein. Even apart from the question of the *Land* class time parameters, the action of the Multi-District Panel in 1971 separated the *Berry I* plaintiffs from the jurisdiction of the *Land* Court and left *Berry I* an independent proceedings not subject to the jurisdiction of the *Land* Court or connected therewith in any manner. *In re Seeburg-Commonwealth*

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[5] Of these, only Allen has filed a brief in this Court.

[6] The Final Judgment effected by Young's *Land* settlement was not entered until December 4, 1973. (App. 193.)

United Merger, 333 F. Supp. 911 (Jud. Pan. Mult. Lit. 1971); Appellants' Brief, p. 12-13.

The Multi-District Panel recognized that the *Berry I* issues arose out of an isolated, negotiated transaction evidenced by a written contract containing specific warranties and representations by Commonwealth. 333 F. Supp. at 912; App. 18 at ¶22(b). Conversely, *Land* class members were predominately individuals who bought Commonwealth stock in the public markets, relying on information made public after October 15, 1968.

The principal misrepresentations of Commonwealth alleged in both *Berry I* and *Berry II* were contained in the agreement of August 20, 1968 which warranted the accuracy of the S-1 of June 22, 1968. As in *Berry I*, these misrepresentations related predominately to the oil and gas properties of Commonwealth as described in the S-1 and as exposed to have been false and fraudulent by the September 29, 1970 Lewis report. Of the twelve allegations of specific misrepresentation in the *Berry II* complaint, six relate to the oil and gas reserves, whereas the *Land* consolidated complaint contains no allegation of misrepresentations of the amount and worth of the oil and gas reserves. (App. 18-21.) Hence, the Multi-District Panel found in 1971 that the *Berry I* allegations raised issues not common to *Land* which "clearly predominate" over any questions of fact common to both actions. 333 F. Supp. at 912. Thus, the Multi-District Panel's action was grounded upon a finding of the lack of the essential common questions of fact necessary to include even theoretically the *Berry I* class

within the *Land* class definition. 333 F. Supp. at 912; Rule 23(b), Fed. R. Civ. Pro.

In the fall of 1973, in this action, appellees for the first time and collaterally questioned the authority of the *Berry I* attorneys to represent the *Berry I* class. Appellants agree that courts have power to question an attorney's authority and that even an adverse party has that privilege. But the undisputed fact here is that when the request for exclusion was filed with the District Court in *Land* in April, 1972 and copies served on the *Land* attorneys as the Court's notice directed, neither the District Court nor any attorney or party raised any question regarding authority for such filing. Additionally, the *Land* Court and attorneys recognized the authority of the *Berry I* attorneys to negotiate and consummate an independent settlement on behalf of the *Berry I* class which received the approval, not of the *Land* Court, but of the *Arkansas* Court with the participation of the attorneys for Commonwealth in *Land.*[7] (App. 49.) This settlement with the two defendants in *Berry I* (not parties to this action and only one of which was a party to *Land)* was the only settlement to which appellants and their attorneys were a party and was expressly independent of any proceedings in *Land.* (App. 49; 50 at ¶1.3.)

Serious constitutional questions arise when at this late

[7] *Harrigan v. U.S.*, 63 F.R.D. 402, 409 (E.D.Pa. 1974) and *Pearson v. Ecological Science Corp.* [1973 Transfer Binder] CCH Fed. Sec. L. Rep. ¶94,030 (S.D. Fla. 1973), cited by appellees, are not in point because the Courts there denied the named plaintiff's claim of representative status and, therefore, class action standing under Rule 23(a), Fed. R. Civ. Pro. (Appellees' Joint Brief, p. 18.)

date the *Land* Court and attorneys raise, for the first time, the authority of the *Berry I* attorneys to act on behalf of the class members who stood as parties from the filing of the complaint in June 1971. *American Pipe & Construction Co. v. Utah,* 414 U.S. ....., 38 L. Ed. 2d 713, 94 S. Ct. 756, 764-765 (1974), *Greenfield v. Village Industries, Inc.* 483 F. 2d 824, 831-832 (3rd Cir. 1973); see also *Class Action Determinations,* Madden and Paully, 42 Ford. L. Rev. 791, 813-814 (1974). Appellees' cited authorities that unnamed class members are not "parties" are now superseded by the subsequent holding of the Supreme Court in *American Pipe.* (Appellees' Joint Brief, p. 18.)

The "chaos" argument assigned by the District Court (and loyally supported by appellees) for not giving effect to appellants' request for exclusion has no basis in law or practice. (Appellees' Joint Brief, p. 18). After the 1971 action of the Multi-District Panel, the *real chaos* would have occurred if *Land* and *Berry I* had proceeded with common plaintiffs. That this was not intended was made certain by the Multi-District Panel's action. 333 F. Supp. at 912. Thus, the race to judgment asserted by appellees was eliminated.[8] (Appellees' Joint Brief, p. 19.)

Rather than cause "chaos," given the peculiar facts of this situation, i.e., the Multi-District Panel's action and non-commonality of facts and issues, the request for exclusion merely reiterated the independence of the two proceedings and prevented the chaos that would have resulted from inconsistent

[8] Although, in point of fact, the *Berry I* judgment preceded judgment in *Land* by some five months.

orders and judgments by independent courts of equal jurisdiction.

Finally, Appellees' implication that *Berry I* class members participated in the *Land* settlement fund contributed by these appellees is not so.[9] (Appellees' Joint Brief, p. 19.) Commonwealth was the only party to *Land* who made any contribution to the *Berry I* settlement and that consisted solely of issuing additional shares and only $75,000 of the total $325,000 cash fund.[10] Not a single appellee contributed in money — or by release of claims against Commonwealth (of doubtful value) —to the *Berry I* settlement proceeds, and not one member of the *Berry I* class was a party to the *Land* settlement, accepted any part of the *Land* settlement proceeds, or released any appellee who was a party in *Land*.

---

[9] There is apparent reference to the possible Commonwealth distribution of shares to the *Berry I* class members in the May, 1972 *Land* stipulation of settlement, but appellants were never parties to, or even aware (until this litigation) of the provisions of, this *Land* settlement stipulation. (App. 157 at ¶4.1; see also App. 154 at ¶1.5.)

[10] Even Commonwealth's $75,000 contribution was in fact monies borrowed by Commonwealth from the by then different owner and parent company of the other defendant in *Berry I*, the Delaware corporation Berry Petroleum Company. (App. 54 at § 5.2.) Neither Commonwealth's co-defendant in *Berry I*, the Delaware corporation Berry Petroleum Company, or its parent, Crystal Petroleum Company, were parties to *Land* or *Berry II*.

II.

Berry Petroleum Company was improperly dismissed as a plaintiff.

Appellees assert that *Fidelis Corp. v. Litton Industries, Inc.*, 293 F. Supp. 164 (S.D. N.Y. 1968), relied upon by appellants, did not sustain the corporation's standing to sue. (Appellees' Joint Brief, p. 21.) This is contrary to the plain language of the Court's opinion:

> "In such a situation [sale of assets and immediate distribution of stock to shareholders] the individual plaintiffs, as well as the corporation, may maintain a cause of action for fraudulent misrepresentation . . . *Coronado Development Corp. v .Millikin,* 175 Misc. 1, 22 N.Y.S. 2d 670, 674 (Sup. Ct. 1940) . . ."[11] 293 F. Supp. at 168-169.

Appellees also assert that "Berry immediately distributed to its stockholders the common stock of Commonwealth received by it in exchange for its assets as was contemplated by the Agreement." (Appellees' Joint Brief, p. 20.) This assertion is erroneous. Approximately ten per cent of the Commonwealth stock was retained by Commonwealth subject to the settlement of litigation then pending against Berry, and such stock was not delivered by Commonwealth for distribution until December 1969.

That the stock received and distributed in 1968 had an artificial market value in no way prevents injury and damage to Berry and its stockholders when it was later exposed to have been in fact worthless at time of delivery. One who re-

[11]See Appellants' Brief, p. 16, for discussion of *Coronado Development Corp. v. Millikin, supra.*

ceives counterfeit money in payment for valuable properties suffers injuries and damages even though the fact of counterfeit is not exposed at the time of receipt.

The damage to the corporation, injury having been shown, is a fact question to be submitted to the trier of the facts and not to be disposed of summarily. (See Appellants' Brief, p. 15-16.)

III.

(A) The three-year statute of limitations of Art. 581-33 applies to 10b-5 actions brought in Texas.

Richardson v. Salinas, 336 F. Supp. 997, 1000 (N.D. Tex. 1972), rejected applying to Texas 10b-5 actions the two-year limitation period applicable to Sec. 27.01, Tex. Bus. and Com. Code,[12] actions, because: "Section 27.01 is based on Article 4004, Tex. Rev. Civ. Stat., since repealed. This statute essentially sets out the elements of common law fraud." See also *Which Statute of Limitations in a 10b-5 Action?,* Raskin and Enyart, 51 Denver L.J. 301, 311-312 (1974); *Choosing a Statute of Limitations in Federal Securities Actions,* Einhorn and Feldman, 25 Mercer L. Rev. 497, 503, 506, (1974).

The civil liability provision of the Texas Securities Act, Art. 581-33(A) (2) is virtually identical to sec. 410(a) (2) of the Uniform Securities Act and similar to sec. 10b-5 of the Securities Exchange Act of 1934, but dissimilar to sec. 27.01 of the Texas Business and Commerce Code (grounded and originating in common law fraud precepts).

This analysis and reasoning is reflected in the precedent. Actions under Sec. 27.01 and its predecessor, Art. 4004, Actionable Fraud, Tex. Rev. Civ. Stat., require evidence of intent or knowing disregard of truth while the scienter requirement of the Fifth Circuit in 10b-5 actions is substantially less demanding. For example compare *Texas Industrial Trust v. Lusk,* 312 S.W.2d 324, 326-327 (Tex. Civ. App. 1958 —

[12]Urged by Appellees' Joint Brief, p. 23 at footnote.

San Antonio, err. ref'd.) and *Brooks v. Parr*, 507 S.W.2d 818, 820 (Tex. Civ. App. 1974 — Amarillo, no writ hist.) with *Herpich v. Wallace*, 430 F. 2d 792, 802, 806 (5th Cir. 1970).

In any event, the controlling Fifth Circuit precedent in Texas, which appellees agree must apply to this action, compels application of the Texas three-year statute of limitations. *Sargent v. Genesco*, 492 F. 2d 750, 758 (5th Cir. 1974); *Richardson v. Salinas, supra*, 336 F. Supp. at 1001; *Hudak v. Economic Research Analysts*, 449 F. 2d 996, 999-1000 (5th Cir. 1974).[13]

(B) There is an issue of fact as to whether the fraud perpetrated on Berry was concealed for more than three years prior to the commencement of this action.

Appellants' complaint alleges that the fraudulent representation of Sunset's oil and gas properties value at $38,361,638, with corporate net worth at $19,928,441, was concealed until the May 1970 Sunset bankruptcy which generated the untainted September, 1970 Lewis report. (App. 18-21 at ¶¶ 22(b), (d), (g), (h), (i), (j), (k); App. 23 at ¶24.)

The December 1969 Commonwealth proxy statement repeating these fraudulent oil and gas reserve misrepresentations is affirmative evidence of the concealment of the fraud from appellants sufficient to raise issues of fact as to when

[13]Second Circuit decisions applying a New York six-year common law limitation period in 10b-5 actions have been implicitly concerned that limitations on 10b-5 actions not be shorter than those prescribed for common law fraud actions. *Klein v. Shields & Co.*, 470 F. 2d 1344, 1346 (2nd Cir. 1972); see also *Azalea Meats, Inc. v. Muscat*, 386 F. 2d 5, 8 (5th Cir. 1967); *Richardson v. Salinas, supra*, 336 F. Supp. at 1001; Appellees' Joint Brief, pp. 22-23.

the alleged fraud was discovered. See balance sheet and appraised net worth items of the October 16, 1968 Commonwealth prospectus and the December 1969 Commonwealth proxy statement. SR 316; see also *deHass v. Empire Petroleum,* 286 F. Supp. 809, 813 (D. Colo. 1968); *Janigan v. Taylor,* 344 F. 2d 781, 783-784 (1st Cir. 1965).

The suspension and reinstatement of Commonwealth stock trading, S.E.C. press releases, newspaper articles, lawsuits filed and consent settlements, while possibly to appellees' thinking "events of significance", did and do not once reveal or even question the gross misrepresentations of the Sunset Petroleum reserves critical to Berry and its shareholders. (Appellees' Joint Brief, p. 24.) Indeed, the December 17, 1969 S.E.C. press release stated that the Commonwealth proxy statement mailed December 8, 1969 (repeating the Sunset oil and gas reserve misrepresentations) is the "first information available about the company's operations and financial condition" since the dissemination of the June 24, 1969 proxy statement.

Apparently, appellees primarily rely upon precedent where the Court arrived at a finding of a lack of reasonable diligence after a full trial on the merits, here obviously inapplicable. *Morgan v. Koch,* 419 F. 2d 993, 996-998 (7th Cir. 1969); *Evans & Co. v. McAlpine,* 434 F. 2d 100, 104 (5th Cir. 19070); *Mittendorf v. J. R. Williston & Beane,* 372 F. Supp. 821, 823 (S.D.N.Y. 1974); *Janigan v. Taylor, supra,* 344 F. 2d at 783-784.

Other precedent cited by appellees concern judicial findings based upon undisputed facts or admissions after full

evidentiary development of lack of actual concealment to plaintiff, again not analogous to this record. *Hupp v. Gray*, 500 F. 2d 993 (7th Cir. 1974); *Turner v. Lundquist*, 377 F. 2d 44, 48 (9th Cir. 1967); *Klein v. Bower*, 421 F. 2d 338, 343 (2nd Cir. 1970); *Rickel v. Levy*, 370 F. Supp. 751, 756 (E.D.N.Y. 1974).

Appellees' footnote assertion for the novel legal proposition imputing constructive knowledge of the contents of all pleadings filed in every court of record to a litigant is simply inaccurate as the cited cases, where the parties' knowledge was found by full evidentiary development, clearly show. (Appellees' Joint Brief, p. 25 at footnote.)

In sum, far from there being "irrefutable evidence" that the alleged fraud could have been discovered more than three years prior to the filing of this litigation, there is nothing in the record which denies or explains appellees' continued concealment of the Sunset reserve misrepresentations until the May 1970 bankruptcy and the cleansed and final September, 1970 Lewis report. (Appellees' Joint Brief, p. 26.)

IV.

Laches does not apply because there has been no unreasonable delay or prejudice to appellees.

On April 4, 1972, appellants served their request for exclusion from the *Land* action, giving explicit notice to appellees that they would not participate in *Land* and were reserving their rights against the *Land* defendants. (App. 43.) No appellees tendered any portion of the *Land* settlement proceeds to appellants, and the May 1972 stipulation of settlement, to which only some appellees were a party (but not appellants), expressly recognized the independent pendency and resolution by the Arkansas Court of the *Berry I* action. (App. 152 at ¶1.3, 1.5.)

The *Berry I* action against Commonwealth only was settled with Commonwealth only in August 1972. (App. 49.) No appellees in this action were parties to that settlement. (App. 47, 49.) Far from being "plain", it is factually and legally erroneous that "the *Berry* settlement was intended to satisfy all claims of the *Berry* sub-class." (Appellees' Joint Brief, p. 28.)

On December 15, 1972, approximately five months after the *Berry I* settlement, appellants commenced this action. (App. 13.) During this five-month period, appellants' counsel conferred with their clients and developed the evidentiary and legal theories of their action. Appellants, during this period of time, concluded to incur the serious expense and obligations of representative plaintiffs in litigation of this nature. See *Eisen v .Carlisle & Jacquelin*, 94 S. Ct. 2140, 2152 (1974).

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

DANIEL F. HOULIHAN being duly sworn, deposes and says that deponent is not a party to this action, is over 18 years of age and resides in the City of NEW YORK, State of NEW YORK. On MARCH 12 1975, deponent served A COPY OF BRIEF OF DEFENDANTS-APPELLEES PETER HUANG. IGOR ANSOFF, AND GOTTFRIED VON MEYERN HOHENBERG upon:

ALL THE ATTORNEYS LISTED ON LIST ATTACHED TO THIS AFFIDAVIT OF SERVICE

attorney(s) for party(s) in this action, at the address(es) designated by said attorney(s) for that purpose by:

MAIL ⋈ depositing a true copy(s) of the same securely enclosed in post-paid wrappers in a Post Office Box regularly maintained by the United States Postal Service at No. 1 Chase Manhattan Plaza, in the City and County of New York, directed to said attorney(s) at the address(es) set out under h name(s); th being the address(es) within the state designated by h for that purpose in the preceding papers in this action.

~~LETTER DROP~~ [ ] depositing a true copy of the same, enclosed in a sealed wrapper directed to said ~~attorney(s)~~, in the ~~letter~~ drop or box of, and accessible from without, of said ~~attorney(s)~~ office at the address(es) set out ~~under~~ the name; and that said office was ~~not open~~ at the time of service.

~~PERSON IN CHARGE~~ [ ] ~~delivering a copy~~ of the same to and leaving the same ~~with the~~ person in charge of said office, said attorney(s) being absent therefrom at the time of said service.

Sworn to before me this 12th day of MARCH, 1975

Herbert W. Brauer

Daniel F. Houlihan

HERBERT W. BRAUER
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